

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

James A. Brown,)	C/A No. 0:10-3025-CMC-PJG
)	
Petitioner)	
)	
v.)	ORDER
)	
Michael McCall, Warden,)	
)	
Respondent.)	
)	

The petitioner has filed this action, *pro se*, seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The respondent filed a motion for summary judgment on April 13, 2011, pursuant to the Federal Rules of Civil Procedure. (ECF No. 25.) As the petitioner is proceeding *pro se*, the court entered an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975) on April 14, 2011, advising the petitioner of the importance of a motion for summary judgment and of the need for him to file an adequate response. (ECF No. 27.) The petitioner was specifically advised that if he failed to respond adequately, the respondent's motion may be granted, thereby ending his case.

On May 9, 2011, the petitioner filed a motion in which he requested that the court order the respondent to provide "a complete record" of documents from his state court proceedings and to hold his response time to the respondent's motion for summary judgment in abeyance until such documents have been provided to the court. (ECF No. 31.) Specifically, the petitioner appears to allege that he filed a *pro se* response to the South Carolina Supreme Court's August 16, 2010 Order of Dismissal pursuant to South Carolina Appellate Court Rule 243(c) that is not included as an attachment to the respondent's Return. The respondent filed a response to the petitioner's motion, stating that all relevant documents in the respondent's possession and all relevant documents

obtained from the Clerk of the South Carolina Supreme Court have been filed with the court. (ECF No. 33.)

Based on the foregoing, it is

ORDERED that the petitioner's motion to compel is denied. It is further **ORDERED** that the petitioner's motion to hold in abeyance his response time to the respondent's motion for summary judgment is granted in part. The petitioner shall advise the court as to whether he wishes to continue with this case and file a response to the respondent's motion for summary judgment within fourteen (14) days from the date of this order. The petitioner may also file an appropriate motion regarding the supplementation of the record in the case if he so elects and attach any documents that he contends should be included in the record of his state court proceedings. The petitioner is further advised that if he fails to respond, **this action will be recommended for dismissal with prejudice for failure to prosecute.** See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).

IT IS SO ORDERED.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

June 1, 2011
Columbia, South Carolina